(3)

No. 06-1719

In The

Supreme Court of the United States

ALICE LARAINE DIMERY,

Petitioner,

v.

ULSTER SAVINGS BANK,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals, State Of New York

REPLY BRIEF

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I. NYS Court of Appeals' new Decision supports examination and adoption of Petitioner's constitutional argument raised before the Court, despite denial of relief to Petitioner

Pursuant to the requirement of 28 U.S.C. § 1257 (2000) that the federal right claimed must be "raised" or "squarely considered and resolved" on appeal before the highest state court [Opp. brief p. 6], the Petitioner respectfully calls the Court's attention to the following.

Subsequent to the Court's March 27, 2007 decision, from which this Petition for a *writ of certiorari* flows, the New York State Court of Appeals on March 29, 2007 handed down a Decision in *Lennard v. Mendik Realty Corp.*, 865 N.E.2d 1223, 8 N.Y.3d 909 (N.Y., 2007) remanding the case to the Appellate Division stating

> "The order of the Appellate Division should be reversed, with costs, and the case remitted to that Court for *consideration of issues raised but not determined on the appeal.*" [emphasis added]

Based upon information and belief this is the first record instance of a remand by the New York State Court of Appeals to the Appellate Court with this specific instruction.

While the reversed order concerns a failure to establish the lack of "constructive notice" " . . . as a matter of law," rendering summary judgment "not appropriate," the parallels with the case subject of this petition would appear to be significant. Essentially, the Court of Appeals held that "summary judgment" was a rush to judgment as a matter of law, and that due process of law required that the Appellate Court consider the "issues raised but not determined on the appeal," which would be relevant to establishing lack or existence of "constructive notice" among other material issues.

In this case, the Petitioner argued to the Court of Appeals that the affirmation of the case judgment after modification (vacating of accountings #2 & #3 and corresponding decretal paragraphs) was a rush to judgment "as

a matter of law" because the Appellate Court did not consider the issues relative to judgment accounting #1 properly raised during a first appeal as of right. The Appellate Court failed to establish the Respondent's right to the judgment against the Petitioner "as a matter of law."

The federal constitutional law implications of the failure of the Appellate Court to render opinion on properly appealed issues during a first appeal as of right essential to the question of Respondent's right to judgment "as a matter of law" not subsequently corrected by the Court of Appeals, is central to the Petition currently before the Court in this case. The apparent nearly immediate subsequent adoption of the Petitioner's argument by the New York State Court of Appeals in *Lennard v. Mendik Realty Corp.* would belie the Respondent's claim on page six of its Opp. brief that the case before this Court is "a morass of unintelligible constitutional arguments."

II. Record supports that the case judgment was rendered without jurisdiction

The failure of the Appellate Court to address the issue of jurisdiction of the trial court to proceed to final judgment on October 26, 2000 while the interlocutory judgment following Part I of a Bifurcated Trial (labeled Decision & Order) was on appeal before the Appellate Court [Petition p. 26] supports that this lengthy litigation concerns a judgment which is *void ab initio*, affirmation and enforcement of which are in continuing and damaging violation of the Fourteenth Amendment due process and equal protection rights of the Petitioner. The controlling precedent is that jurisdiction can be raised at anytime in any legitimate proceeding.

III. The NYS Court of Appeals did not cite non-compliance for its determination of the ground "untimely"

While at page 8 of the Opp. brief the Respondent states that the Court of Appeals "dismissed Petitioner's

appeal as untimely based solely on state law grounds," the Court's decision simply stated "*see* CPLR 5513[a])," and dismissed on the ground "untimely." [*See* Decision incorporated below] The Court did not explain its reasoning for why an appeal taken within 30 days of the Appellate Court's entered October 3, 2006 (1) denial of reargument and (2) denial of leave to appeal to the Court of Appeals, on face in compliance with CPLR 5513[a], would be dismissed on the ground "untimely."

IV. The Respondent's Opposition brief in essence asks this Court to determine the entered October 3, 2006 Appellate Court Decision a "legal non-occurrence"

The October 3, 2006 Decision is a filed Appellate Court determination, and the Petitioner's appeal to the Court of Appeals within 30 days of entry is timely under NYS law.

This situation is analogous to a competent tribunal granting a litigant a new trial. When the Appellate Division Second Judicial Department on August 2, 2006 instructed the Petitioner that a motion for reargument would be properly entertained if submitted within 30 days and the motion was submitted and was docketed, the Petitioner obtained all the rights afforded by statute relative to that status. The Decision denials (1) of the motion for reargument or (2) in the alternative* leave to appeal to the Court of Appeals afforded the Petitioner the legal rights inherent in that status. (Petition pp. 9-13)

*[Respondent misstates Petitioner's alternative motion. (Opp. brief pp. 2, 5)]

If the Respondent's argument is that the Decision is a product of a sham state proceeding, under *color of law*, other federal constitutional law questions would be raised.

V. Court of Appeals Decisions are Reported; Respondent makes false claims to Court

At page 2 of its Opp. brief, the Respondent knowingly and falsely states to this Court that the December 21, 2006 and March 27, 2007 Decisions of the New York State Court of Appeals are "unreported," with expectation that the Court will rely upon the false factual statements as true, and that the Court will be subliminally influenced.*

> *[Respondent reports December 27, 2004 $327,221.98 judgment modification in favor of Petitioner by Appellate Court (Petition p. 4) as Decision "denying Petitioner's appeal." (Opp. brief p. 2)]
>
> *[Respondent's repeated techniques of "*counter statement*" narratives seamlessly obfuscate the line between fact and fiction with the intention that this Court will assume the fiction to be fact in its deliberations.]
>
> *[Relatedly, the case record establishes a pattern by Respondent of material falsifications and misrepresentations (counter statements) in briefs to the State Courts and in legal documents to NY State Departments where rights have been asserted under non-existent (counter-stated) judgment awards.]

For the convenience of the Court, the Decisions as reported are incorporated below:

860 N.E.2d 987
7 N.Y.3d 920
Alice Laraine DIMERY, Appellant,
v.
ULSTER SAVINGS BANK, Respondent.
Court of Appeals of New York.
December 21, 2006.

Appeal dismissed, without costs, by the Court of Appeals, sua sponte, upon the ground that it is untimely (*see* CPLR 5513[a]).

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865 N.E.2d 1241
8 N.Y.3d 904
Alice Laraine DIMERY, Appellant.
v.
ULSTER SAVINGS BANK, Respondent.
No. 207.
Court of Appeals of New York.
March 27, 2007.

Reported below, 13 A.D.3d 574, 789 N.Y.S.2d 159.

Motion for reconsideration of this Court's December 21, 2006 dismissal order denied [*see* 7 N.Y.3d 920, 827 N.Y.S.2d

[865 N.E.2d 1242]

685, 860 N.E.2d 987]. Cross motion for the imposition of sanctions denied.

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CONCLUSION

For the foregoing reasons, and for those in the petition, the petition for a writ of certiorari should be granted. In the alternative, the petition should be granted, the order of the Court of Appeals should be vacated, the appeal reinstated, and the case remanded for appellate review and determination of the matters properly and timely previously raised on appeal affording the Petitioner the "appeal as of right" provided by New York State statutes, thus far unconstitutionally denied.

Respectfully submitted,

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